



POWAY UNIFIED SCHOOL DISTRICT

September 29, 2011

Office of the Secretary
Federal Communications Commission
Washington, DC 20554
Via: ECFS fjallfoss.fcc.gov/ecfs2

Re: *In the Matter of Acceleration of Broadband Deployment Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights-of-Way and Wireless Facilities Siting (WC Docket No. 11-59)*

The Poway Unified School District (the "District") submits this letter in the above-captioned inquiry proceeding to provide its Reply Comments and concerns to the Federal Communications Commission ("FCC"). The communications industry has chosen this proceeding to criticize not only local zoning and public safety regulation of cellular facility siting, but also the very concept of paying reasonable rent for use of real estate, fixtures, and other property interests owned by all forms of public entities, including school districts. The industry appears to suggest that the Commission can rewrite all forms of existing leases, licenses and other contracts for use of publicly-owned personal and real property whenever a communications company is the lessee/licensee. The District strongly opposes any such action, as described in detail below.

The District has important interests in this proceeding. The District is a public school district empowered by the California Education Code to provide educational facilities and services to students within its boundaries. (See Cal. Ed. Code § 35000 *et seq.*) The District currently serves approximately 33,000 students and operates 25 elementary schools, 6 middle schools, and 5 high schools in the cities of Poway and San Diego, California. The District currently permits cellular tower, antennas, and/or facilities on District property at many of its school sites, including 4 high school sites with cell towers on stadium light poles, 2 free-standing towers on middle school sites, 2 high schools with cell towers mounted on street light-type poles, 1 cellular antenna mounted on a building at a middle school and 1 cell tower disguised as a baseball backstop at an elementary school. In each of these cases, there are also separate equipment buildings associated with each cell tower/facility. Most of these structures are very near or adjacent to the cell tower/facility and none are further than 200 feet away.

The District permits these facilities under strict regulation related to design and construction of any facility on a school site by the California Division of the State Architect, as well as in accordance with student safety and access requirements prescribed by the California Department of Education. All of the towers themselves, along with the associated equipment buildings are on District property and have been approved by the California Division of the State Architect for fire and life safety access and compliance. In particular, antenna mounting

details and poles must also receive the Division of the State Architect's approval prior to installation.

At all of the above facilities, the access for the wireless provider to maintain service and/or upgrade the cellular facilities also requires vehicles and/or personnel to cross school district property. Accordingly, the District's current agreements contain explicit requirements and limitations related to access/service, generally requiring work to be done after school hours and closely coordinated with school district officials to ensure appropriate access and student safety as well as avoid interference in school operations.

These agreements were all negotiated at arms-length and the District has come to rely on the agreement revenues to deliver important educational programs. These revenues are used to supplement the K-12 educational program in the District, primarily for updating technology. If the price and other terms in these freely-negotiated agreements can be challenged, after the fact, and in a forum in Washington, D.C., then the District is at risk of deprivation of its property rights without adequate compensation and the students and employees of the District are at physical risk of inadequate controls over the safe design and operation of these sites.

The District does not believe the Communications Act permits the Commission to interfere in normal property transactions of private or public real estate owners who are not otherwise subject to the Commission's authority. It is an extraordinary legal concept to suggest that a federal regulatory agency, directed to oversee interstate communications, could have legal authority to intrude on or to preempt private and public property rights guaranteed under the US Constitution. We urge the Commission to respect the District's basic property rights and to recognize that wireless service providers should not be allowed to place additional facilities on the District's property, including its school buildings, rooftops, stadium lights, and other facilities without the District's consent based on freely negotiated terms and conditions. This is especially important given the District's unique obligation to provide safe and secure school facilities for the educational programs it provides its students. In fulfilling this obligation, the District's paramount concern will always be student safety.

Although the District's primary mission is to provide educational services to students within its boundaries, the District does license such portions of its properties to wireless providers at market-based rates. However, these are proprietary agreements, like leases for access to privately owned property. Under California law the District has the power to hold and convey real or personal property for the educational purposes it serves. Therefore, any potential regulation related to increased access rights and/or a right to place additional facilities on District property potentially conflicts with the District's pre-eminent obligation to maintain the above-described school facilities for the District's educational purposes. The District has no interest in licensing or leasing its property under any conditions that would run contrary to the District's policies and procedures for student safety and/or interfere with its educational programs. If the Commission were to selectively preempt certain terms of the District's existing license agreements (including the price terms), the District would have little or no incentive to enter into such agreements at all. Allowing cellular operators on school property and then

ensuring safe practices at and around these sites creates burdens and risks for the District. The District can only justify this activity if there are real and actual benefits that support the District's primary mission of education and the activity is conducted in a manner that the District, in its sole discretion, judges is safe and secure for the District's students.

In conclusion, the Commission cannot and should not interfere with the District's basic property rights and duty to provide safe and secure school facilities for its students. The Commission should not intrude on the District's discretion to set the terms and conditions for licensing of the District's school facilities and real property. The Commission should take no action that calls into question the enforceability of existing, voluntarily-negotiated agreements. Commission regulation, in short, is likely to create significant new risks that will actually discourage the leasing or licensing of District property to wireless communication providers.

Sincerely,



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